Office-Supreme Court, U.S.
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ALEXANDER L. STEVAS,
CLERK

No. 80-2115

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

KAREN G. SILKWOOD, by the Administrator of her estate, BILL M. SILKWOOD, et al.,

Petitioners,

v.

THE KERR-McGEE CORPORATION, et al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

SUPPLEMENTAL BRIEF IN OPPOSITION OF RESPONDENTS

DEAN A. McGEE, JAMES J. KELLY, PETER COLEFAX, EARLE M. JORGENSEN, EDWIN L. KENNEDY, BREENE M. KERR, ROBERT S. KERR, JR., F. C. LOVE, GEORGE B. PARKS, A. T. F. SEALE, JAMES E. WEBB, R. T. ZITTING, PARKER S. DUNN, RONALD ADKISSON, ROY E. KING, G. J. SINKE, JAMES MARLER, G. FRANCE, III, JAMES READING, FRED WELCH, AND W. C. GENTRY

William G. Paul*
L. E. Stringer
John J. Griffin, Jr.
Of the Firm:
CROWE & DUNLEVY
A Professional Corporation
1800 Mid-America Tower
Oklahoma City, Oklahoma 73102
(405) 235-7700

Glenn W. McGee
C. Lee Cook, Jr.
David C. Bogan
Of the Firm:
CHADWELL, KAYSER, RUGGLES, McGEE & HASTINGS, LTD.
8500 Sears Tower
Chicago, Illinois 60606
(312) 876-2100

*Counsel of Record Upon Whom Service Is To Be Made.

September, 1981

THE JOURNAL RECORD PUBLISHING CO., 621 N. ROBINSON, OKLAHOMA CITY, OKLA. 235-3100

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SUPPLEMENTAL BRIEF IN OPPOSITION OF INDIVIDUAL KERR-McGEE RESPONDENTS

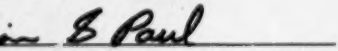
Pursuant to Supreme Court Rule 22.6, we wish to call the Court's attention to an intervening matter related to the Petition for Certiorari in this case which was not available to use at the time we filed the Brief in Opposition of the Individual Kerr-McGee Respondents.

One of the Questions Presented by the Petition in this matter is the asserted conflict between the decision of the Court of Appeals for the Tenth Circuit below and a decision by a panel of the Court of Appeals for the Fifth Circuit in *Scott v. Moore*, 640 F.2d 708 (5th Cir. 1981). We wish to advise the Court that on August 31, 1981, the Fifth Circuit granted a petition for rehearing *en banc* in *Scott v. Moore* and ordered that the case be reheard by the Court of Appeals *en banc*. A copy of that order is attached as Exhibit "A," and a copy of a letter from the Clerk of the Fifth

Circuit to counsel of record in the case is attached as Exhibit "B."

Under Rule 17 of the Rules of the United States Court of Appeals for the Fifth Circuit, unless otherwise expressly provided, the effect of granting a rehearing *en banc* is to vacate the panel opinion. Therefore, the opinion reported at 640 F.2d 708 and relied upon by Petitioners has been vacated by the Fifth Circuit.

Respectfully submitted,



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Glenn W. McGee
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David C. Bogan
Of the Firm:
CHADWELL, KAYSER,
RUGGLES, McGEE &
HASTINGS, LTD.
8500 Sears Tower
Chicago, Illinois 60606

COUNSEL FOR INDIVIDUAL
KERR-McGEE RESPONDENTS

INFO COPY

INFO COPY

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

U.S. COURT OF APPEALS
FILED
AUG 31 1981
GILBERT F. GANUCHEAU
CLERK

No. 79-1196

PAUL E. SCOTT, ET AL.,

Plaintiffs-Appellees,

versus

BILL MOORE, ET AL.,

Defendants,

LABORERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL #870, ET AL.,

Defendants-Appellants,

INTERNATIONAL UNION OF OPERATING ENGINEERS, ETC., AFL-CIO, LOCAL 450,

Defendant-Appellant.

- - - - -

Appeals from the United States District Court for the Eastern District of Texas

- - - - -

ON PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC
(Opinion March 26, 1981, 5 Cir., 1981_____, _____F.2d_____).

(August 31, 1981)

Before GODBOLD, Chief Judge, BROWN, AINSWORTH, CHARLES CLARK, RONEY, GEE, TJOFLAT, HILL, FAY, RUBIN, VANCE, KRAVITCH, FRANK M. JOHNSON, JR., GARZA, HENDERSON, REAVLEY, POLITZ, HATCHETT, ANDERSON, RANDALL, TATE, SAM D. JOHNSON, THOMAS A. CLARK, and WILLIAMS, Circuit Judges.

BY THE COURT:

A member of the Court in active service having requested a poll on the application for rehearing en banc and a majority of the judges in active service having voted in favor of granting a rehearing en banc,

IT IS ORDERED that the cause shall be reheard by the Court en banc with oral argument on a date hereafter to be fixed. The Clerk will specify a briefing schedule for the filing of supplemental briefs.

Exhibit A

United States Court of Appeals

FIFTH CIRCUIT

GILBERT F. GANUCHEAU
CLERK

OFFICE OF THE CLERK

TEL 504-589 6514
600 CAMP STREET
NEW ORLEANS, LA 70130

August 31, 1981

TO ALL COUNSEL OF RECORD:

No. 79-1196 - Scott v. Moore

Dear Counsel:

Enclosed is an order this day entered by the Court directing that this case be reheard en banc with oral argument.

Under Fifth Circuit Local Rule 17 the effect of granting a rehearing en banc is to vacate the previous opinion and judgment of this Court and to stay the mandate.

Pursuant to this Court's direction for the Clerk to specify a briefing schedule for the filing of supplemental briefs, appellants will have until September 30, 1981, for filing their supplemental brief, with appellees' supplemental brief to be filed in this office not later than October 30, 1981. The supplemental briefs must be on file in the Clerk's office by the specified dates above.

All parties are requested to furnish thirty (30) copies of their supplemental briefs and opening briefs previously filed, for the use of the en banc court.

Very truly yours,

Gilbert F. Ganucheau
Clerk

GFG/jmg
Enclosure

Mr. Martin W. Dies
Mr. William N. Wheat
Mr. Paul F. Waldner
Messrs. Arthur R. Almquist &
Robert Q. Keith

cc: Hon. Joe J. Fisher

Exhibit B

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of September, 1981, three copies of this Supplemental Brief in Opposition to Petition For A Writ Of Certiorari were mailed, postage prepaid, to each of the following:

Daniel P. Sheehan
1324 N. Capitol Street
Washington, D. C. 20002
Attorney for Petitioners

Solicitor General
Department of Justice
Washington, D. C. 20530
Attorney for Respondents,
Lawrence Olson and Theodore Rosack

Jacque Srouji
P. O. Box 15702
Nashville, Tennessee 37215
(Pro Se)

I further certify that all parties required to be served have been served.

William G Paul

WILLIAM G. PAUL
Counsel for Individual
Kerr-McGee Respondents